

The Gazette of India

EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 472] NEW DELHI, FRIDAY, NOVEMBER 21, 1952

ELECTION COMMISSION INDIA NOTIFICATION

New Delhi, the 21st November 1952

No. 19/262/52-Elec.III.—WHEREAS the election of Shri Lakshminivas Ganeriwal, a member of the Legislative Assembly of Hyderabad State from the Ramayanpet Constituency of that Assembly has been called in question by an election petition (Election Petition No. 262 of 1952 before the Election Commission) duly presented under Part VI of the Representation of the People Act (XLIII of 1951) by Shri Laxman Rao S/o Shri Venkat Rao, Village Chelmeda, Post Ramayanpet, Taluq and District Medak, Hyderabad State;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, SECUNDERABAD, DN.

Friday the 14th day of November 1952

PRESENT.—Shri S. Taki Bilgrami, Bar-at-law, Chairman, Election Tribunal.

Shri N. Kumarayya, I.L.C.S., Member of the Election Tribunal.

Shri Srinivas Raghava Chary, B.A., B.L., Member of Election Tribunal.

Election Petition No. 2 of 1952

Laxman Rao, son of Venkat Rao, aged 30, Caste Velma, occupation Agriculturist, residing at Village Chelmeda, post Ramayanpet, Taluq and District Medak, Hyderabad Dn.

Petitioner.

Versus

1. Lakshminivas Ganeriwal, son of Ramlal, aged 50, Agriculturist, occupation Business, residing at Seetharam Bagh, Hyderabad, Dn.

2. Bhoomaji Pather, son of Ramaji, aged 28 years, Caste Vanjar, occupation Agriculturist, Village Ramayanpet, Taluq and District Medak, Hyderabad State.

3. Parsa Sarada Devi, W/o Venkateshwar Rao, 32 years, Brahmin, Household duties, residing at Madhapalli, Secunderabad, Dn.

4. Gopal Reddi, son of Hanumath Reddy, aged 35 years, Agriculturist, Village Toopran, Taluq Gajwel, District Medak Hyderabad State.

5. Balreddy, aged 38 years, Caste Reddy, Pleader, residing at Medak, Hyderabad State.

6. Ramugari Sathyanarayan, aged 36 years, caste Gowd, Cultivator, Village Toopran, District Medak, Hyderabad State.

Respondents.

This petition coming on 12th November 1952 for final hearing before us, S. Taki Bilgrami, Bar-at-law, Chairman, Election Tribunal, N. Kumarayya, H.C.S., member of the Election Tribunal, Srinivasa Raghava Chary, B.A., B.L., member of the Election Tribunal, in the presence of Shri Bhanwarlal Jain, B.Sc., LL.M., Advocate for the petitioner and M/s Madhava Reddy, M.A., LL.B., and K. A. Krishnamachary, Advocates for respondent No. 1 and respondent No. 2 in person, respondents 3 to 6 having been declared *ex-parte*, and having stood over for consideration till this day, the Tribunal passed the following:—

ORDER

This petition was filed by Shri Lakshman Rao, an Elector in the Constituency to set aside the Election of the Ramayanpet Constituency of Medak District held on 31st Dec. 1951. The following three candidates contested the election and went to the polls.

1. Shri Laxminivas Ganerival "Con." (A successful candidate).
2. Shri Bhoomaji Pathar (IND.).
3. Shrimati Parsa Sharadadevi (IND.).

The following candidates withdrew:—

1. Shri Gopal Reddy.
2. Shri Bal Reddy.
3. Shri Ramgarl Sathyanarayan.

The nomination papers of two candidates: (1) Shri Jagannath Reddy (SOC), (2) Shri Mehbub Ali (SOC) were rejected by the Returning Officer.

2. It is alleged in the petition that the nomination papers of these 2 candidates were duly submitted before the time i.e., on the 15th day of November, 1951. 17th November 1951 was the date fixed for scrutiny. An objection was raised on that date by Shri Bhoomaji (R.2) that these candidates are not electors in the same constituency and that it was necessary for them to produce Electoral Rolls or certified copies thereof as required under Section 33(6) of the Representation of People Act 1951. Their nomination papers, therefore, are not in order and should be rejected. Though both the candidates produced the electoral rolls of the constituencies in which they were enrolled, and though they represented that the certified copies of the relevant entries could not be produced owing to the absence of the Returning Officer concerned, and the Peshkar said that their production was not necessary because the Returning Officer of both these constituencies was the same; and despite the fact that the Electoral Rolls of these constituencies were in possession of the Returning Officer, and produced by the candidates he rejected the nomination papers of both these candidates on 19th November, 1951 on the grounds of their non-production. The nomination papers were filed on 15th November 1951. The defects, if any, were not pointed out by the Returning Officer then. It was incumbent on him later, on the date of scrutiny under Section 33(5) of R.P.A. 1951 to institute an enquiry and satisfy himself on the point by looking at the Electoral Rolls himself. Instead of doing this he summarily rejected these nomination papers. His rejection was wrong and illegal and has materially affected the result of the election which should be set aside. In his counter Shri Laxminivas Ganerival (R.1) denies that the Electoral Rolls of the Medak and Andole Constituencies were in possession of the Returning Officer at the time of the scrutiny, and that he was in a position to verify that the names of these candidates were included therein. None of these candidates, he alleges, produced either the Electoral Rolls or the certified copies thereof though they were called upon to do so by the Returning Officer. He asserts that it is not the duty of the Returning Officer, and he is not legally bound to make any enquiries, and point out the defects in the nomination papers at the time of their presentation, and his failure to do so does not make his subsequent decision rejecting these papers void or illegal. The candidates, it is alleged, did not even ask him to produce either the Electoral Rolls or their certified copies and refused to do so when called upon; therefore, the nomination papers were properly rejected. He further denies that rejection of the nomination papers, has affected the result of the election as they had no real prospects of being elected. He also objects that these candidates whose nomination papers were rejected were necessary parties, and the petition is therefore not maintainable for their non-joinder and should be rejected. R. 2 does not contest the petition. The proceedings are *ex-*

parte against the rest who were served with the notice but did not appear. The following issues were framed on these pleadings:

1. (a) Was a copy of Electoral Roll in which the name of the candidate is included, filed by the petitioner and if he failed to do so what is its effect?
- (b) Whether the names of Mahbubali and Jagannath Reddy were in fact on the Electoral Roll?
2. In view of the fact that the Returning Officer of Ramayanpet Constituency and Medak Constituency was the same, was it necessary to file a copy?
3. (a) Were Shri Jagannath Reddy and Mahbubali whose nomination papers were rejected necessary parties and what is the effect of their non-joinder?
- (b) Is the mention of the names of these 2 in the petition sufficient?

Issue Nos. 3 (a) and (b) were decided on 6th October, 1952 (*Vide* the order of the date). We shall now proceed to decide issue Nos. 1 (a) and (b).

Electoral Rolls were summoned and it was found that the name of Jagannath Reddy S/o Krishna Reddy appears in the Medak Constituency, Cir. Lingareddipally, Village No. 44, Role No. 57 and the name of Mahbub Ali S/o Mohd. Ali in the Roll of Andole Constituency, Cir. Sangareddipally, Village No. 16, Roll No. 6 (Additional list). Issue No. 1 (b) is, therefore, decided in favour of the petitioner.

3. So far as issue No. 1 (a) is concerned assuming that Sub-section (6) of section 33 R.P.A. applied to this case we think that the Returning Officer was not justified in rejecting the nomination papers of these 2 candidates on the ground of non-production of the certified copies of the Electoral Rolls of the constituency in which their names appear as Electors. Under Sub-section 5 of Section 33 R.P.A. it is the duty of the Returning Officer to satisfy himself that the names and electoral roll numbers of the candidates and their proposers and seconders as entered in the nomination papers are the same as entered in the Electoral Rolls. He is not absolved from this duty merely because the candidates when called upon to do so failed to produce the Electoral Rolls or certified copies thereof. It has been held in a number of cases that rejection of the nomination papers on this ground is improper. See in this regard Sen and Poddar, page 106 "Basti District North-East General Rural Constituency 1937—Kalap Raj Vs. Bishambhar Nath Tripathi and another." See page 108. It was laid down in this case that the production of Electoral Roll is merely a rule of evidence. It is not necessary for the candidate or his proposer or seconder to produce a certified copy of the Electoral Roll, if objection is taken. It is the duty of the Returning Officer to summon the Rolls and verify himself. In that case, as in the present, the candidate had requested the Returning Officer to look into the Rolls himself, and satisfy himself on this point, but he refused to do so and rejected the nomination papers. The petitioner has produced his application before the Returning Officer embodying this request in the present case. See also Hammond page 97, case No. 14, Azamgarh (N.M.R.) 1931 "Shiva Shanker Singh Vs. Thakur Motisingh". (See page 99). In this case it was decided that the certified copy of an entry made in the Electoral Roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for the election. But it does not mean that the certified copy shall be the only evidence admissible in proof thereof. It is not necessary that the candidate should produce certified copies called upon, and rejection of his nomination paper for this reason is improper.

4. The learned pleader for the respondent relies on Sen and Poddar page 267 Coconada General Rural Constituency 1937 "Eli Vadapalli Garu Vs. Bayya Suryanarayanamurthi Garu and Others". This case was decided under Rule 14 (2) of 1936. The wording of this Rule was relied upon, which made it imperative on the candidate to produce electoral rolls and of the certified copies thereof. There is no such provision in the present Rules. This case cannot be taken as an authority. Moreover there are other cases which we have cited above under those very Rules in which a different view was taken. The learned pleader for the respondent also contends that all the cases except this Coconada General Rural Constituency case which he has cited, are regarding the proposers and seconders, and not with reference to a candidate, and therefore they are not applicable. We think there is no substance in this contention. The section 33 Sub-sections 5 and 6 do not purport to lay down different Rules for proposers and seconders and for the candidate. The rule is exactly the same for all. This is plain from the wordings of these Sub-sections. It is also contended on behalf of the respondent that the candidate was asked to produce the Rolls but he refused to do so. We do not think that this can make any difference. The candidate had, as their application in this connection clearly shows requested the Returning Officer to

look into the Roll himself and had shown reason why they were unable to secure certified copies thereof. We think that on the circumstances it was incumbent on the Returning Officer who was also Returning Officer of Andole and Medak Constituencies, and presumably in possession of these Electoral Rolls to look into them and satisfy himself. As we have said above it was his duty under Section 33 Rule 5 to do this, and he was not absolved therefrom by calling upon the candidates to produce certified copies of the Rolls, or because some one has raised objection in this connection. We therefore, think that the nomination paper was improperly rejected on this ground. It is not necessary in view of our decision on this point to give a finding as to whether the Electoral Roll was actually produced by the candidates as alleged by the petitioner or not. We therefore decide issue No. 1 (a) in favour of the petitioner.

5. So far as issue No. 3 is concerned we think after the decision of issue No. 2 in favour of the petitioner it is hardly necessary to decide this issue; nevertheless since this is a legal issue involving interpretation of the statutory provisions of importance, and elaborate arguments were addressed to us by both the parties in this connection, we think it is proper to express our opinion in this regard. We think that section 33 (6) applies only when the Returning Officer of the Constituency for which the candidate wishes to stand is different from the constituency in which the candidate is an elector. This Sub-section referred to above runs as follows:—

"If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the Electoral roll of the constituency for which he is the Returning Officer, he shall for the purposes of Sub-Section (5) require the person presenting the nomination paper to produce either a copy of Electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll."

It is clear from the wording used that the Returning Officer will not call upon the candidate to produce the Electoral Rolls or the certified copies thereof merely in case his name is not on the Roll of the Constituency for which he wishes to stand as a candidate, but plainly lays down that he will only call upon the candidate to do so if his name is not in the Electoral Roll of the Constituency "*For which he is a Returning Officer.*" No other interpretation is possible of the language used above. In this case the Returning Officer Aajani Prasad, the Deputy Collector of Medak, who rejected these nomination papers was a Returning Officer not only of Ramayanpet, the election of which is in dispute, but also of Andole, Medak and Narsapur. *Vide* Gazette Ordinary of 7th September, 1951, Vol 82 No. 37 page 884. Having in view the wording of the Sub-section 6 section of the 33 R.P.A. we do not think that the Returning Officer, in this case, could call upon these candidates to produce the Electoral Rolls or certified copies thereof, and on their failure to do so was justified in rejecting their nomination papers. This issue is also, therefore, decided in favour of the petitioner.

6. The question that we have now finally to decide is whether the rejection of these nomination papers has materially affected the result of the election or not, and whether the election on that ground is liable to be set aside. There are numerous cases on this point in which it has been laid down that when a nomination paper is improperly rejected, it will be presumed that the result of the election was materially affected. See in this regard *Sen & Poddar*, 564, Moradabad District North-West, Muhammadan Rural Constituency, 1937—*Bashir Ahmad Vs. M. Akhtar Hussain Khan* and others. See on page 568 of *Sen and Poddar* and 823 at page 835. In this case it was laid down that in the case of improper rejection of the nomination paper of any candidate the whole electorate is deprived of its right to vote for a candidate who was entitled to stand, and therefore, a strong presumption will arise that the result of the election was materially affected. See also *Doabia*, Indian Election Cases 1935 to 1950, Vol. I, page 15 and the same volume page 75 and also page 85 and pages 248 and 260. On all these pages different cases are reported, in which the same view was upheld. This, in our opinion, also stands to reason and common sense. Rejecting this view will mean that we think ourselves to be in a position to foretell with a fair degree of certainty that even if these candidates had contested the election they would have failed to get elected. This under ordinary circumstances is almost impossible to predict, and it will be very unjust to hold. It is contended by the respondent that Jagannathreddy acted as an election agent or Shrimati Sharda Devi, and if he had stood Shrimati Sharda Devi would have withdrawn and he would have not have received more votes than Shrimati Sharda Devi if he had stood for election. All this is speculative. These facts were not mentioned in the counter filed by the respondent.

7. We therefore hold that the nomination papers of both the candidates Shri Jagannath Reddy S/o Krishna Reddy and Mahbub Ali S/o Mohd. Ali were improperly rejected by the Returning Officer, and that this has materially affected the result of the election. The result is that election is declared wholly void, and the seat vacant, and a fresh election may take place.

8. Since the result of the election was affected not by the mistake, or misconduct or fault of any party but by the mistake of the Returning Officer no costs are awarded to the petitioner. The parties to bear their own costs.

9. Pronounced in the open Court this 14th day of November 1952.

(Sd.) S. TAKI BILGRAMI, *Chairman.*

(Sd.) N. KUMARAYA, *Member.*

(Sd.) S. RAGHAVACHARY *Member.*

P. S. SUBRAMANIAN,
Officer on Special Duty.

